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Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 12.10 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/49/10 and A/49/355; A/51/275 and Corr.1 and Add.1)

Cluster I (1, 3 and 4) (continued)

1. Mr. CALERO RODRIGUES (Brazil), reporting on the outcome of informal consultations held since the previous meeting, said that while delegations had made progress in resolving their differences, some outstanding issues remained. The most difficult was the relationship between the future framework convention and existing watercourse agreements. The dominant view was that, as a general principle, the convention would not affect the rights and obligations arising out of such agreements; however, since not all delegations accepted that principle, it was felt that some provision should be made to allow States which were parties to existing watercourse agreements to endeavour, if they so wished, to harmonize those agreements with the convention, although there was no obligation to do so. He had formulated a proposal in that regard, and there had been general agreement, not on the terms of his proposal, but on the solution which it indicated.

2. As to the question of future watercourse agreements, the general feeling was that most of the remaining problems could be solved in the Drafting Committee once the Working Group had concluded its consideration of cluster I.

3. Mr. LALLIOT (France) said that the principle of giving States the option of harmonizing the provisions of existing agreements with those of the convention was unacceptable to his delegation, which was why there had been no agreement on the formula proposed by the representative of Brazil. As to the question of future watercourse agreements, his delegation agreed that the draft articles preserved the principle of States parties' freedom to conclude such treaties.

4. Mr. CALERO RODRIGUES (Brazil) said that, while he was aware that some delegations disagreed with his proposal, he believed it represented the only possible basis for compromise.

5. Mr. NEGA (Ethiopia) said that the representative of Brazil had clearly and adequately presented the consensus reached during the informal consultations; however, the basis for compromise was weak and needed to be strengthened. The Working Group should defer consideration of the relationship between the framework convention and existing agreements to a later stage. It might be

possible to incorporate a provision along the lines indicated by the representative of Brazil in the final clause of the convention.

6. The CHAIRMAN said that, while he had taken note of the French position, the general trend reported by the representative of Brazil contained sufficient guidelines to enable the Drafting Committee to resolve the issues relating to article 3.

7. Mr. TODA (Slovakia) said that the draft articles represented an exercise in the codification and progressive development of international law culminating in a framework convention, not an effort to harmonize national legislation. In paragraph 2 of its commentary on article 3, the International Law Commission had clearly spelt out the nature of a framework agreement, namely, "to provide for the States parties the general principles and rules governing the non-navigational uses of international watercourses, in the absence of specific agreement among the States concerned, and provide guidelines for the negotiation of future agreements". He requested the Expert Consultant to clarify whether the Commission's aim had been to lay the groundwork for harmonizing future bilateral agreements.

8. Mr. ROSENSTOCK (Expert Consultant) concurred that the text presented by the Commission was as described by the representative of Slovakia. Some delegations wished to extend the scope of the convention beyond what the Commission had envisioned; in summarizing the results of the informal consultations, the representative of Brazil had endeavoured to respond to their point of view, rather than simply reflecting the content of article 3 as currently drafted. Delegations would need to consider whether or not they favoured that development. The issues involved were both substantive and of a drafting nature, and could be examined in greater detail by the Drafting Committee.

9. Mr. PRANDLER (Hungary) said that his delegation endorsed the conclusions outlined by the representative of Brazil and agreed that the best way to proceed would be to identify general trends in the discussion of specific articles. While his delegation was in favour of adhering to the timetable adopted at the previous meeting, experience showed that it would be unrealistic to endeavour to reach agreement on certain articles before considering others. For that reason, his delegation suggested that the Working Group should seek to identify the areas of disagreement concerning particular articles and should revert to those issues at a later stage.

10. Mr. ISKIT (Turkey) asked whether the Working Group would resume consideration of article 1 and article 3, paragraphs 2 and 3, at a later stage, as there continued to be unresolved issues concerning those provisions.

11. The CHAIRMAN said that he now intended to take up article 4. However, as the representative of Turkey had pointed out, delegations had raised issues other than the ones taken up in informal consultations. The Working Group would have to consider those issues in order to give guidelines to the informal group.

12. Mr. NEGA (Ethiopia) noted that many proposals had been made concerning existing watercourse agreements. His understanding was that the Working Group would return to the question later before submitting the articles in question to the Drafting Committee.

13. Mr. VORSTER (South Africa) said that the interests of third States should be safeguarded in cases when each user of an international watercourse might be significantly affected. However, as the observer for Switzerland had pointed out at the preceding meeting, entitling such States not only to participate in the consultations and negotiations but also to become parties to a partial agreement might lead to undue restriction of the freedom of the other watercourse States. If it was unacceptable to delete article 4, paragraph 2, the paragraph should be amended to indicate that the right of such third States to become parties to an agreement between two or more of the watercourse States should be restricted to aspects of the agreement relevant to the nature, extent and effect of their use. In the case of agreements not dealing with an entire watercourse, a State whose interests were significantly affected was only entitled to participate in consultations and negotiations to the extent that its use was affected, but the right of such a State to become a party to the agreement was not similarly qualified - because of the technical problem of how a State could become a party to part of an agreement. The International Law Commission had suggested ways in which such partial participation might be effected, and there seemed to be no good reason why the right to become a party to an agreement should not be similarly qualified. His delegation suggested that paragraph 2 should be amended accordingly.

14. Mr. VAN DE VELDE (Belgium) said that his delegation was against the deletion of article 4. Paragraph 2 should be amended to bring it into line with article 3, paragraph 2, and to make it clearer. He proposed that the words "to a significant extent" should be relocated to the last line of the paragraph, after the word "affected".

15. Mr. ROSENSTOCK (Expert Consultant) said that the concern raised by the representative of South Africa was discussed in the commentary to article 4. The concern was a valid one and could be looked at by the Drafting Committee with a view to ensuring that article 4 reflected the Commission's intent as expressed in the commentary.

16. Mrs. BRODARD (Switzerland) said that the commentary was clear and presented no difficulty for her delegation. However, as the Expert Consultant had just pointed out, the text of the paragraph itself was not quite clear. It might be acceptable for the text to be amended along the lines proposed by the representatives of Argentina and South Africa, but it must be remembered that paragraph 1 dealt with all the watercourse States and paragraph 2 with a different group of States. It would not be appropriate to imply that third States were entitled to participate in the negotiations. If paragraph 2 was retained, it must make it clear that third States were entitled to participate in consultations but not in actual negotiations.

17. Mr. PRANDLER (Hungary) said that his delegation could accept the Belgian proposal although it did not seem to make much difference. Article 4, paragraph 2, must be retained but could be amended along the lines suggested by the Expert Consultant.

18. Mr. ROSENSTOCK (Expert Consultant) pointed out that he had not suggested any specific language but merely that the paragraph could be amended to make the Commission's intention clear.

19. Mr. LOIBL (Austria) said that article 4, paragraph 2, should be amended in the Drafting Committee to take account of the concerns of the observer for Switzerland, which his delegation shared to some extent.

20. Mr. LALLIOT (France) recalled that his delegation had reserved its position on article 4 and the subsequent articles.

The meeting rose at 12.55 p.m.